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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Inquiry on)	WT Docket No. 97-150
Competitive Bidding Process)	
for Report to Congress)	

COMMENTS

of the

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

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COMMENTS OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the *Public Notice*, FCC 97-232, released on July 2, 1997. Pursuant to Section 309(j)(12) of the Communications Act, the Commission is conducting a public inquiry regarding the use of competitive bidding to award spectrum licenses. It must submit a report to Congress by September 30, 1997. The Report must evaluate whether, and to what extent, competitive bidding rules have resulted in the prompt delivery of service to rural areas and the dissemination of licenses to rural telephone companies.

NTCA is a national association of approximately 500 local exchange carriers ("LECs") providing telecommunications services to end users and interexchange carriers throughout rural America. NTCA comments are limited to the effect of Commission rules on rural areas and "rural telephone companies."¹ All of NTCA's members are "rural telephone companies" as defined by Commission rules in 47 C.F.R. 1.2110(b)(3).

¹ The rules define a "rural telephone company" as "any local exchange carrier, including affiliates, with 100,000 access lines or fewer."

I. THE AUCTION RESULTS DATA INDICATE THAT MOST RURAL COMPANIES HAVE NOT HAD VIABLE OPPORTUNITIES TO PROVIDE PCS IN THEIR SERVICE AREAS UNDER THE CURRENT COMPETITIVE BIDDING RULES.

The Commission is required to ensure that small businesses and rural telephone companies are given the opportunity to participate in the provision of spectrum based services.² Congress has determined that the public interest will be served by disseminating licenses to rural telcos and rapidly deploying advanced telecommunications services to rural areas. In the *Notice*, the Commission does not, but should, acknowledge that its procedures have provided very limited opportunities for rural telephone companies. This inquiry should be used to address and inform Congress about both the positive and negative aspects of competitive bidding rules. NTCA has repeatedly expressed concern about the poor representation of small and rural telephone companies in the spectrum auctions and has provided the Commission with specific auction-related information concerning its NTCA member bidding entities.³ It has done so to make the point that the rules have not always achieved the congressional objectives relating to rural areas and rural telcos.

Competitive bidding rules have resulted in limited participation of NTCA member companies in the C-block auction, a block set aside as an entrepreneur block for broadband PCS and originally designed as an incentive to enhance small business

² 47 U.S.C. § 309(j)(4)(D).

³ See, generally, NTCA Comments, *In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, GN Docket No. 96-113, *Notice of Inquiry*, FCC 96-216 (rel. May 21, 1996).

participation in the competitive bidding process for spectrum-based services. Data previously filed with the Commission shows that few NTCA companies were able to compete in the C-block auctions, and only a very small number actually won a license or hold investments in any of the winning consortiums.⁴

While 76 of the nearly 500 NTCA members did participate in the C-block auctions, approximately 80 percent of these members were only able to bid as participants in one of the consortium bidding entities. The auction results show that a mere 6 percent of NTCA's total membership are now owners of winning licenses or hold some investment in a winning license, and only 2 NTCA members are sole owners of a broadband PCS license.⁵

Contrary to the Commission's previous expectations,⁶ the data do not indicate that all rural telephone companies have had effective opportunities to provide PCS in their service areas under the current bidding rules. Rather, the auction results indicate that relatively few NTCA members were able to successfully bid for broadband PCS licenses.⁷ NTCA urges the Commission to submit these facts in its Report to Congress.

⁴ See NTCA Comments at Appendix A, GN Docket No. 96-113, which provides the percentage of NTCA members who participated in the C-block auction by state, their average percentage equity in a bidding entity, and the total number of licenses won by bidding entities partially or wholly owned by NTCA members (by state). Also provided are the member average 1995 annual revenues, number of employees, and number of subscribers by state.

⁵ NTCA Comments at 3, GN Docket No. 96-113.

⁶ See generally, *In the Matter of Implementation of Section 309(j) of the Communications Act-Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5599 (1994)(*Competitive Bidding Fifth Report and Order*).

⁷ Similar concerns were expressed in NTCA comments filed in WT Docket No. 96-148. NTCA urged the Commission to permit rural telephone companies the first option to partition PCS licenses in their wireline service area, and also suggested that rural companies be permitted to obtain partitioned licenses outside their service areas under any new rules the Commission adopts for all other entities. See NTCA Comments, filed

II. RESULTS FROM A JULY, 1997, SURVEY OF NTCA MEMBER COMPANIES FURTHER ILLUSTRATE THAT RURAL TELEPHONE COMPANIES HAVE NOT BEEN GIVEN SIGNIFICANT OPPORTUNITY TO SUCCESSFULLY PARTICIPATE IN THE COMPETITIVE BIDDING PROCESS.

The Commission *Notice* solicits comment on the rules concerning license partitioning, financing obstacles, and the designated entity provisions.

In response to this request, NTCA surveyed a subset of member companies in connection with these issues. Out of a total of 91 responding members, less than half participated in any FCC auction within the last four years.⁸ Thirty percent of those companies that did not participate stated that their lack of participation was directly due to difficulty in obtaining financing.⁹ Further, many of those that did bid for one or more license were forced to drop out as the bidding reached extremely high prices-per-POP. "Bidding made [the] prices unreasonably high," stated one respondent. Another respondent said that its calculations showed that the "prices would be way-beyond [the]

August 15, 1996, *In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees*, WT Docket No. 96-148, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-474 (December 20, 1996) (*PCS Partitioning and Disaggregation Report and Order*).

⁸ According to the company responses, only 43.96 percent participated as a bidding entity in any one of the following spectrum auctions during the last four years: broadband PCS, narrowband PCS, Multipoint Distribution Service, or Wireless Communications Service.

⁹ Non-participating respondents listed other reasons for abstaining as well: 41 percent of all non-participating entities indicated that the auctions rules were too confusing; 61 percent stated that they did not participate because of the size of the in-region license area; and 31 percent pointed to the build-out requirements as the deterring factor. One respondent stated, "[the] cost of meeting the [build-out] requirements may eliminate rural customers from accessing [PCS] service."

worth [of the licenses].”

NTCA believes the survey has a message the Commission should address in its report to Congress. The emphasis on raising revenues is an obstacle to accomplishing other purposes in Section 309(j). Despite the claims of “favorable payment terms” for small businesses and rural telephone companies, the rules have not had enough of an impact to overcome the significant financial barriers that frustrate opportunities for rural telephone companies to obtain licenses when bidding against entities with huge financial resources. The emphasis on raising revenues has had the effect of excluding companies primarily interested and historically committed to serving rural areas. The public interest in speedy delivery to all areas of the Nation has not been served as a result.

In addition to questions concerning financing, the surveyed companies were asked whether or not the Commission’s partitioning rules have enabled them to provide wireless service within their rural areas. NTCA learned that of the 32 out of 91 responding companies which have attempted to partition, only 6 have some ownership interest in a successfully partitioned PCS license covering their service area. Seventeen of the 32 companies attempting to partition exclaimed that the license holder will not entertain a request to partition only a “small” area. Rural carriers with service areas adjacent to a very large MTA or BTA expressed a particular difficulty in obtaining partitioning agreements.¹⁰ Some respondents indicated that the winners have considered

¹⁰ One respondent’s comment illustrates the problem. “We have been very interested in PCS, however, our rural Wisconsin area is part of the Minneapolis/St. Paul MTA & BTA. This fact prevented us from bidding. Partitioning has not been any help, as of yet.”

partitioning and/or disaggregation of spectrum only “when sorely in need of cash,” and not as a regular practice. Others expressed frustration with the constant fluctuation in partitioning rules. One rural carrier, in particular, indicated that a BTA license was not sought during the auction under the assumption that the rural carrier had exclusive partitioning rights.¹¹ The survey responses only reaffirm that the geographic partitioning and spectrum disaggregation rules, alone, do not ensure that small and rural carriers have ample opportunity to deliver new technologies and services to rural areas.

The July, 1997, survey of these NTCA member companies also revealed certain information regarding the licensing of Basic Exchange Telecommunications Radio Service (BETRS). According to the results, 18 percent of the responding companies either provide BETRS service already or anticipate doing so in the future. More than two-thirds of these current or future BETRS providers also anticipate expanding BETRS service, thereby creating the need for additional BETRS channels.¹² However, these companies indicated that the Commission’s recent “geographic area” licensing scheme and BETRS auction rules¹³ would not enable them to readily participate in upcoming auctions for BETRS licenses. On the contrary, 81 percent of current BETRS providers

¹¹ In the middle of the PCS auction process, the Commission decided to eliminate rural telephone companies’ exclusive right to partition by allowing licensees to partition to all comers. *See supra*, Fn. 7.

¹² According to the survey results, 68.75 percent of those companies that currently provide BETRS or intend to provide BETRS in the future also intend to expand and therefore need more channels.

¹³ *See In the Matter of Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *Second Report and Order*, FCC 97-59 (February 24, 1997).

and those desiring to offer BETRS in the future expressed that the Commission's proposal to auction BETRS licenses on an Economic Area basis would create a significant obstacle to their participation in such auctions.

III. THE COMMISSION SHOULD EXPLAIN WHY IT HAS NOT FULFILLED THE MANDATES IN 309(j).

A number of the Commission's decisions since 1993 have been hostile to rural concerns. Most recently, the Local Multipoint Distribution Service ("LMDS") Order adopted by the Commission frustrates Congress' many objectives expressed in Section 309(j)(3) and 309(j)(4) of the Communications Act.¹⁴ The Order adopts an eligibility restriction that prohibits incumbent LECs, including rural telephone companies, from acquiring in-region, 1,150 MHZ LMDS licenses for a three-year period.¹⁵ The Commission ironically used 309(j) to *deny* rural telephone companies the opportunity Congress said they must have, *i.e.*, to obtain licenses. The report to Congress should explain why the Commission has repeatedly ignored rural telco concerns that its bidding rules retard the deployment of advanced wireless telecommunications services to rural areas.

The Commission's decision in the LMDS Order is typical of other recent decisions involving competitive bidding and spectrum auctions, *i.e.*, it utterly ignores

¹⁴ See *In the Matter of Rulemaking to Amend Parts 1,2,21, and 25 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHZ Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, FCC 97-82 (March 13, 1997).

¹⁵ *Id.* at ¶¶ 157-161.

Congress' many directives that the FCC specifically consider rural areas and rural telcos.¹⁶ In 1994, the Commission granted rural telcos the exclusive right to partition in the PCS service, but it diluted that right by extending it to any entity in December, 1996.¹⁷ Again, in 1997, after promising that it would not auction BETRS frequencies, it changed policy in mid-course.¹⁸ It not only decided to auction BETRS, but chose a geographic

¹⁶ See, e.g., *In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding*, WT Docket No. 97-82, *Notice of Proposed Rulemaking*, FCC 97-60 (Feb. 28, 1997) (proposing to adopt uniform rules for all auctionable services - no reference to rural telephone companies in treatment of designated entities); *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 97-140 (April 23, 1997) (proposing to amend narrowband PCS designated entity rules - again, no mention of rural telephone companies).

¹⁷ FCC adopted rules granting rural telcos exclusive right to partition, stating at the time that the rules "would satisfy Congress' mandate that the Commission provide an opportunity for rural telcos to participate at auction and in the provision of broadband PCS. See *supra*, Fn. 6 at ¶ 153.

Two years later, in the middle of the PCS auctions and before rural telcos had the opportunity to take advantage of their partitioning rights, the Commission opened partitioning to all entities. See *supra*, Fn. 11.

¹⁸ When the FCC initiated WT Docket 96-18, it described it as a "proceeding. . . to examine [FCC] paging regulations in light of statutory objective of regulatory symmetry for all commercial mobile radio services ("CMRS")." In the *First Report and Order*, the FCC clarified that BETRS, which is a fixed service and by definition not CMRS, was not subject to the WT Docket No. 96-18 proceeding. See *In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *First Report and Order*, FCC 96-183 (April 23, 1996) at ¶ 38.

licensing scheme and promulgated rules that are totally inconsistent with universal service goals it sought to promote when it authorized the service.¹⁹

III. CONCLUSION


The competitive bidding rules adopted in various proceedings have made it difficult for rural telcos to obtain spectrum at auctions. As a result, many of the companies with a record of service to rural areas have been unable to obtain wireless licenses. A primary reason for this difficulty is the Commission's repeated failure to live up to all of its 309(j) mandates. For the above reasons, NTCA urges the Commission to acknowledge the negative, as well as the positive, aspects of its competitive bidding rules in its upcoming report to Congress. This should lead the way for needed reforms to

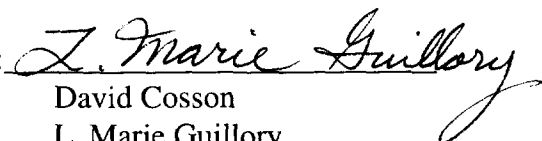
¹⁹ See *supra*, Fn. 13; see also, *In the Matter of Basic Exchange Telecommunications Service*, CC Docket No. 86-495, *Report and Order*, 3 FCC Rcd 214, 219 (1988) (FCC called its decision to create BETRS "a major step [] in the pursuit of [its] goal of extending basic telephone service to as many Americans as possible . . .").

satisfy the public's interest in promoting adequate service and the rapid deployment of wireless technologies to rural areas.

Respectfully submitted,

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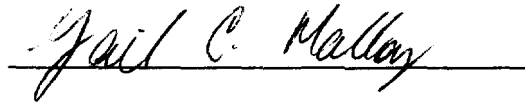
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August 1, 1997

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT Docket No. 97-150 was served on this 1st day of August 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

A handwritten signature in cursive script, reading "Gail C. Malloy", is written over a horizontal line.

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